

FILED

JUL 26 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

JOSE ZAVALA,

Petitioner - Appellant,

v.

LEEANN CHRONES, Warden,

Respondent - Appellee.

No. 05-56472

D.C. No. CV-04-00922-SJO

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
S. James Otero, District Judge, Presiding

Submitted July 24, 2006^{**}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Jose Zavala, a California state prisoner, appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2254 petition as meritless. We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253(a). We review de novo a

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

district court's ruling on the merits of a habeas corpus petition, *Sandgathe v. Maass*, 314 F.3d 371, 376 (9th Cir. 2002), and we affirm.

Zavala contends that the trial court violated his Fifth Amendment rights by allowing the prosecutor to impeach him with statements obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). We deny habeas relief because the state court's conclusion that Zavala's statements were voluntary and thus admissible for impeachment purposes was not contrary to, nor an unreasonable application of, clearly established Supreme Court precedent. *See* 28 U.S.C. § 2254(d)(1); *Colorado v. Connelly*, 479 U.S. 157, 167 (1986) (holding that "coercive police activity is a necessary predicate" to the finding that a statement is not voluntary); *Pollard v. Galaza*, 290 F.3d 1030, 1033 (9th Cir. 2002) ("Although a statement, taken in violation of *Miranda*, may not be used substantively in the prosecution's case-in-chief, such a statement, if voluntary, may be used for impeachment should the Defendant testify inconsistently."). Moreover, even if admission of Zavala's statements constitutes constitutional error, Zavala has not demonstrated that such error had "substantial and injurious effect or influence in determining the jury's verdict." *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993).

AFFIRMED.